



\$~77

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 196/2020**
STATEPetitioner

Through: Mr. Hitesh Vali, APP.
SI Anil Kumar, P.S. Sulanpuri.

versus

DEVENDER KUMAR @ PAPPU & ORSRespondents
Through: Mr. Zahid Hanief, Ms. Nazia Parveen
and Mr. Sarfaraz Nabi, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
% **09.12.2025**

1. The State has filed this petition under Section 378(3) of the Code of Criminal Procedure, 1973¹ (*pari materia* Section 419(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023²) seeking leave to appeal judgement dated 11th September, 2019 acquitting the Respondents of the offences under Sections 308/341/427/34 of the Indian Penal Code, 1860³. These proceedings arise from FIR No. 1516/2006, registered at P.S. Vijay Vihar.

FACTUAL BACKGROUND:

2. The prosecution case, in brief, is as follows:

2.1. On 16th September, 2006, at about 10:00 p.m., the complainant, T. V.

¹ "CrPC"

² BNSS

³ IPC"



Verghese (PW 1), was returning in his car to Sangam Apartments, Sector 24, Rohini. He claims that occupants of another vehicle, which was following him, threatened him on the way and, once he reached the main gate of the apartment complex, the accused Devender Kumar @ “Pappu” (Respondent No. 1) and his associates assaulted him with fists and kicks. PW 1 alleges that he was struck on the face and head, his head was banged against a wall, and he suffered a severe injury to his right eye. He claims to have become unconscious and to have been removed to hospital by unknown persons. He was first taken to BSA Hospital, thereafter to Jaipur Golden Hospital, and later to St. Stephen’s Hospital for further treatment. PW 1 also states that, the next day, he was informed at the hospital that his car had been damaged by the assailants.

2.2. On 19th September, 2006, while PW 1 remained admitted at St. Stephen’s Hospital, his statement was recorded and the FIR came to be registered. The investigation was initially conducted by SI Girjesh Singh (PW 4). Respondent No. 1 was arrested on 25th September, 2006. The remaining accused, Rajender Kumar (Respondent No. 2) and Surender Kumar (Respondent No. 3), were later formally arrested while on anticipatory bail. After completion of investigation, the charge sheet was filed. Charges under Sections 308, 341, 427 and 34 IPC were framed on 28th May, 2013. The Respondents pleaded not guilty and claimed trial.

2.3. To prove its case, the prosecution examined 11 witnesses, summarised as follows:

<i>PW</i>	<i>Name</i>	<i>Deposed in Substance</i>
<i>PW 1</i>	<i>T.V. Verghese (Complainant / Injured)</i>	<i>Alleged that accused Devender @ Pappu and his associates assaulted him near Gate No. 1, Sangam Apartments, causing grievous right-eye injury;</i>



PW	Name	Deposed in Substance
		<i>claimed unconsciousness and subsequent hospitalisation; identified accused. In cross-examination, initially denied but later admitted FIR No. 911/2006 against him arising from the same night, and stated that PW-11 was not present at the spot.</i>
PW 2	Ct. Hari Kumar	<i>Joined investigation; witnessed arrest of accused Devender @ Pappu; proved arrest memo, personal search memo and disclosure statement.</i>
PW 3	HC Rajesh Kumar	<i>Took rukka to the police station and got FIR registered; returned with FIR and rukka to the IO.</i>
PW 4	Retd. SI Girjesh Singh (IO)	<i>Recorded complainant's statement at St. Stephen's Hospital; prepared rukka and site plan; conducted arrests of Devender @ Pappu and investigation; identified accused in court.</i>
PW 5	Dr. Kuldeep Singh (BSA Hospital)	<i>Proved MLC; stated patient refused examination and treatment; no opinion on injuries could be given at that stage.</i>
PW 6	HC Kalicharan	<i>Duty Officer who registered the FIR on the basis of rukka; proved FIR and endorsement.</i>
PW 7	Ct. Mahesh Kumar	<i>Joined investigation; witnessed formal arrest of accused Surender and Rajender while on anticipatory bail.</i>
PW 8	Dr. Pradeep Dua (Jaipur Golden Hospital)	<i>Examined PW-1, who was brought with an alleged history of road traffic accident; noted severe right-eye injury and smell of alcohol; referred the patient to R.P. Centre, AIIMS.</i>
PW 9	Dr. Krishna Vaitheeswaran	<i>Proved the medical certificate (Ex. PW9/A) opining the right-eye injury as grievous and the discharge summary (Ex. PW9/B); admitted that both documents record the alleged history as road traffic accident.</i>
PW 10	SI Roop Lal	<i>Conducted further investigation; formally arrested co-accused Surender and Rajender; obtained grievous injury opinion and filed chargesheet.</i>
PW 11	Biju John (Independent Witness)	<i>Deposed that he saw the accused assaulting PW-1 near the apartment gate and accompanied him to the hospital; identified the accused. Initially referred to Star Apartments as the place of occurrence, but later stated it was Sangam Apartments.</i>



2.4. After completion of prosecution evidence, statements of the accused were recorded under Section 313 CrPC. They denied the allegations and asserted false implication. Devender Kumar stated he was not present at the spot and was at his native village in Uttar Pradesh. Rajender Kumar and Surender Kumar also asserted they were elsewhere at the relevant time. No defence evidence was led.

2.5. On appreciation of the evidence and material on record, the Trial Court, by the impugned judgment, acquitted all the accused of the offences charged.

GROUND OF APPEAL

3. Mr. Hitesh Vali, APP for the State, urges the following grounds to seek leave to appeal against the impugned judgement:

3.1. The impugned judgment is unsustainable in law as it proceeds on conjectures and surmises and does not reflect a proper appreciation of the evidence on record.

3.2. Trial Court unjustifiably discarded the testimonies of PW 1 (the injured complainant) and PW 11 (the eyewitness), both of whom identified the Respondents and supported the prosecution version. Their testimonies were clear, mutually corroborative, and could not have been rejected without cogent reasons.

3.3. PW-11, an independent eyewitness gave a natural and consistent account of the assault and explained the role of each of the accused. The Trial Court wrongly treated minor inconsistencies as fatal, even though they did not strike at the core of the prosecution case.

3.4. Reliance placed on an unrelated accident in FIR No. 911/2006 was misconceived, since the accident case and the alleged assault were distinct



occurrences, separated in time and place. It is contended that only the factum of registration was proved and neither the contents of the FIR nor any version therein was proved in accordance with law, yet adverse inferences were drawn by conflating the two.

3.5. Trial Court did not correctly appreciate the medical evidence, and that the grievous injury to the right eye stands established through PW 5, PW 8 and PW 9 and the contemporaneous medical record.

ANALYSIS

4. The application is at the threshold stage under Section 378(3) CrPC. Leave is not automatic. This Court must apply its mind to the record including the testimonies of the witnesses, and record reasons as to why leave should or should not be granted, and whether the acquittal recorded by the trial court calls for interference.⁴

5. Tested against these principles, the impugned judgment does not disclose any infirmity that calls for leave. The Trial Court did not rest its conclusion on conjecture. It anchored its doubt in (i) the credibility of PW 1 when set against contemporaneous medical and police records, (ii) the prosecution's failure to satisfactorily explain the three-day delay in the circumstances of the case, and (iii) the uncertainty surrounding PW 11's presence and reliability. The reasons for the acquittal read as follows:

"34. The careful analysis of the deposition of complainant / victim (PW1) shows that it is full of contradictions when juxtaposed with other evidence brought on record. The complainant said that when he was coming towards his house in his Alto car from Sector-6 and reached near Sangam Apartment gate, one car was following him and occupants of that car were exhorting "Maaro Maaro". During his cross-examination, he said that he did not know why the people following him were saying

⁴ *State of Maharashtra v. Sujay Mangesh Poyarekar*, (2008) 9 SCC 475; *Manoj Rameshlal Chhabriya v. Mahesh Prakash Ahuja*, 2025 INSC 282.



"Maaro Maaro". He said that he had not committed any accident with his Alto car. He again denied the suggestion that he had met with accident and then reached at his house in Sangam Apartment. He denied the suggestion that he committed an accident and in order to save himself he falsely implicated the accused persons in this case. He then denied the suggestion that an FIR bearing no. 911/06 U/s.279/337 IPG dated 17.09.2006 was registered against him. But, he again said that such FIR was registered.

35. Ld. Defence counsel has submitted that when he had requested the court to call for the case file of FIR No.911/06 for confronting the same to the complainant, then only the complainant had taken U-Turn and admitted the registration of FIR No.911/06 fearing his exposure to falsehood once the file of FIR No.911/06 was summoned by the court. The judicial file of FIR No.911/06 was called and FIR No.911/06 was proved as Ex. PWI/DA. Then the complainant had admitted that the FIR No.911/06 was registered against him U/s.279/337 IPG on 17.09.2006 and that the accident happened on the same night of the alleged incident of this case. He said that Biju John and Raju John reached the hospital. He also said that Biju John and Raju John were not present at the spot.

36. There is absolutely no whisper in the complaint Ex. PWI/A or in the examination in chief of the complainant that he had met with any accident almost at the same time when the alleged incident of his beating had taken place. Under such circumstances, it becomes necessary to gather the information from the documents on record. Ex. PW5/A is the MLC of the complainant prepared at Dr. BSA Hospital bearing MLC No. 4811/06 which records that complainant was brought to hospital on 16.09.2006 at 11.15 PM by CATS Alfa-8 I/C Sanjay Mehndiratta with alleged H/o RTA (Road Traffic Accident) about 15 minutes back as per Pt. (patient) himself. The attending doctor has made his remarks on the MLC that the patient refused any kind of treatment and examination in the hospital. The statement was made by him in the presence of attending doctor which was witnessed by his cousin Biju John.

37. The file of FIR No.911/06 PS Rohini U/s.279/338 IPC was called which shows that accused TV. Verghese was charge-sheeted in that case and notice was framed against him U/s.279/338 IPC by Ld. MM on 16.04.2013. The MLC of the victim Bablu bearing No. 4812/06 of Dr. BSA Hospital In that case shows that victim Bablu was also brought to the hospital by CATS Alfa-8 I/C Sanjay Mehndiratta i.e. the same vehicle and by the same person as of the complainant herein. The alleged history of injured Bablu of that case also shows RTA about 15 minutes back as per patient himself. The SI FIR of that case was registered on the complaint of Bablu (victim in FIR No.911/06) who had stated that while he was going to his home from his work place i.e. Ashoka Tent House in Sector-7, Rohini and at about IG.SO'PM when he reached near Rithala Metro Station, he was hit by car no. DL7CD- 2616 from the backside



which was driven by driver carelessly and at a high speed. He further stated that the driver of the car stopped his car pretending that he will take the victim to the hospital, but instead he took him towards village Prahlad Pur and then victim Bablu raised alarm whereupon public persons gathered and stopped the car near Sector-24 and gave beatings to the said driver of the car. Somebody made call to the police and police van had reached there and both of them had been taken to the hospital.

38. Thus, MLCs of both victim in FIR No.911/06 and that of the complainant in this case are of the same time and of the same hospital and the victim / complainant in this case has ultimately admitted about registration of the case bearing FIR No.911/06 yet he concealed this fact from the police and subsequently he got registered his FIR. in the night intervening 19.09.2006 and 20.09.2006. He gave complaint at 10.50 PM on 19.09.2006 and the FIR was registered at 12.15 AM on 20.09.2006. In the meanwhile, the DD entry which was received by the police which is Ex. PW3/A recorded on 17.09.2006 at about 1.45 AM was lying pending, it is worthwhile to note that DD entry dated 17.09.2006 Ex. PW3/A was recorded on the information received by the police from Jaipur Golden Hospital. In the DD entry, it is recorded that the information has been given by Dr. Jaswant Singh of Jaipur Golden Hospital that Mr. TV. Verghese had met with accident near his house and has been admitted to the hospital.

39. The record reveals that the complainant left Dr. BSA Hospital without medication and reached Jaipur Golden Hospital at 11.50 PM with Mr. Biju John and his MLC Ex. PW8/A shows that he had given alleged history of road traffic accident to attending doctor and the time of accident is given as 10:00 PM. He was conscious, oriented and alcohol smelling from mouth as per remarks made by the attending medical officer. He was referred to AIIMS but instead he went to St. Stephen's Hospital. As per Ex. PW9/A and, PW9/B he was admitted in St. Stephen's Hospital with alleged history of road traffic accident at 10:00 PM on 16.09.2006. He remained admitted there from 17.09.2006 to 26.09.2006. Thus, the patient was never unconscious as per the MLCs and medical documents of all the three hospitals. Under such circumstances, there is no explanation as to why there was delay of three days in registration of FIR and why he got registered instant FIR against accused. Normally delay in FIR would not have become fatal to the prosecution case but under the circumstances when history was narrated by the complainant / victim himself as RTA in all the three hospitals and even same history of RTA was informed by Jaipur golden Hospital to the police on the basis of which DD entry no.5 PP Budh Vihar was recorded on 17.09.2006, kept pending for statement of complainant which was given after three days for registration of instant FIR, a serious doubt has arisen in the mind of the court that the FIR alleging assault by the accused herein was an afterthought which was possibly got registered by the complainant in



order to save himself from criminal liability in FIR No.911/06 U/s.279/337 IPG as suggested by Ld. Defence Counsel.”

6. From the record, it emerges that PW 11 was projected as the independent eyewitness. The Trial Court found his testimony unsafe to accept for reasons that cannot be brushed aside as surmises. First PW1, the injured in cross-examination, stated that PW 11 was not present at the spot. Once the injured witness himself disowns the presence of the sole “independent” eyewitness, the prosecution carries a heavier burden to explain how PW 11 nevertheless witnessed the assault. That gap remains. Second, PW 11 initially located the incident at “Star Apartments” and only later attempted to correct it to “Sangam Apartments”. In a case where the place of occurrence matters to the prosecution narrative and where the witness is relied upon as the neutral observer, this was a legitimate circumstance for caution. These are not cosmetic slips. These are crucial aspect that go the root of the matter, relating to presence.

7. More importantly, the contemporaneous medical record concerning PW-1, spanning three different hospitals, consistently records the history of injury as a road traffic accident. The initial MLC at BSA Hospital notes an alleged history of “RTA” about fifteen minutes prior, as stated by the patient himself, and further records that he declined examination and treatment. The subsequent records at Jaipur Golden Hospital also proceed on an alleged history of road traffic accident, noting that the patient was conscious, oriented, and emitting smell of alcohol. The medical record of St. Stephen’s Hospital similarly reflects the same history. In addition, the DD entry received from Jaipur Golden Hospital records that PW-1 had met with an accident near his residence. Where such a consistent and contemporaneous



medical history emerges from independent sources, the Trial Court was justified in treating it as a significant circumstance while assessing the credibility of the later allegation of a brutal assault.

8. The State argues that FIR No. 911/2006 was “unrelated” and that the Trial Court conflated two distinct incidents. That submission does not create an arguable error because the Trial Court did not rely on FIR No. 911/2006 to hold that the case of prosecution was false. It used that record to test the credibility of PW 1 as his stand shifted in cross-examination, and to see whether the contemporaneous surrounding circumstances offered a plausible alternative explanation for the injury. That exercise falls squarely within the court’s domain while appreciating evidence, particularly the power to test veracity in cross-examination and to assess how inconsistencies affect credit under Sections 145, 146 and 155 of the Indian Evidence Act, 1872.

9. The Trial Court also noticed the striking proximity of timing and the fact that the complainant and the victim in FIR No. 911/2006 were brought to the same hospital by the same CATS ambulance and official. In the face of this circumstances, the defence hypothesis was not a fanciful theory. It was a competing narrative supported by contemporaneous records.

10. The Trial Court was entitled to ask why the prosecution version emerged after three days, and only after the DD entry remained pending. The delay, viewed in isolation, may not have been fatal. The Trial Court has, in terms, recognised that proposition. The difficulty for the prosecution arises from the context. PW 1’s stated history in hospital records was not an assault but an accident. The police had already received information of an accident. However, the statement leading to registration of the FIR alleging assault came only on 19th September, 2006 while PW 1 was admitted in St.



Stephen's Hospital. In that setting, the Trial Court's doubt that the assault allegation may have been an afterthought, possibly to explain away the injury and to distance the complainant from criminal exposure in FIR No. 911/2006, cannot be characterised as perverse or irrational.

11. The State also places reliance on the medical evidence to contend that the grievous right-eye injury corroborates assault. The Trial Court did not dispute the injury. The Trial Court doubted the cause. That distinction matters. An injury being grievous does not, by itself, resolve whether it arose from an assault as alleged or from a road traffic incident, particularly when the patient's own contemporaneous history points in a different direction.

CONCLUSION

12. Leave under Section 378(3) CrPC is meant for cases where the petition discloses an arguable error that warrants an appellate reappreciation. The impugned judgment rests on a coherent evaluation of credibility and contemporaneous record. The doubts recorded by the Trial Court are not speculative. They arise from PW 1's shifting stand, the consistent accident history in medical documents, the unexplained delay in the circumstances, and the uncertainty regarding PW 11's presence. At the highest, the State seeks a different view of the same material. That is not enough at the threshold, especially where the view taken by the Trial Court is a reasonably possible view.

13. The application for leave to appeal is, accordingly, dismissed.

SANJEEV NARULA, J

DECEMBER 9, 2025

as